**BADAN PEGUAM MALAYSIA** A

**v.**

**DATUK BANDAR KUALA LUMPUR**

HIGH COURT MALAYA, KUALA LUMPUR B
SM KOMATHY SUPPIAH JC
[CIVIL SUIT NO: S21-163-2009]
8 OCTOBER 2013

***ADMINISTRATIVE LAW:*** *Exercise of administrative powers - Local authority - Removal of banners at plaintiff's premises - Whether conduct of defendant pursuant to By-Laws ultra vires of s. 102 of Local Government Act 1976* C

***STATUTORY INTERPRETATION:*** *Aids to construction - Definition - Whether banner for commercial purposes - Whether plaintiff required licence to put up banners - Interpretation of By-Laws - Whether purposive interpretation appropriate* D

The plaintiff had put up three banners at its premises in conjunction with the International Human Rights Day when the plaintiff organised a Festival of Rights at its premises in Leboh Pasar Besar, Kuala Lumpur and the car park adjacent to it ('the premises'). Several officers of DBKL ('the defendant') entered the premises of the plaintiff and pulled down and confiscated the banners and claimed that the plaintiff had failed to obtain a licence to put up the banners as required by the Advertisements (Federal Territory) By-Laws 1982 ('By-Laws'). The defendants contended that pursuant to the By-Laws, the defendants were authorised to enter any premises to remove banners that have been put up without the approval of DBKL. Therefore, the plaintiff filed this application under O. 14A of the Rules of Court 2012 and claimed that the defendants' actions were unconstitutional and unlawful. The plaintiff sought a declaration that the By-Laws limited the plaintiff's right to freedom of expression and was unconstitutional and therefore void. The plaintiff further sought a declaration that the exercise by the defendant under the powers of the By-Laws to remove the banners were *ultra vires* of s. 102 of the Local Government Act 1976 ('LGA'). The defendants, however, contended that it had not acted in breach of the Federal Constitution or *ultra vires* on the ground that the plaintiff's banners were advertisements as defined in the By-Laws and thus, the defendant had the right pursuant to By-Laws 14(1) to enter and remove the banners. The plaintiff took the position that the language used in By-Laws 2 demonstrated that the object and purpose of the provision was to regulate commercial advertisements and to equate commercial E F G H I

advertisements with non-commercial messages would be contrary to the object of the provision. The plaintiff argued that if a literal interpretation was given to this definition, it would have led to absurd results as even advertisements which were expressing ideas, opinions, principles and values would require a licence. The plaintiff stressed that a purposive interpretation promoting the purpose and object underlying the By-Laws was to be preferred to a literal interpretation. To the contrary, the defendant contended that a literal interpretation was to be favoured as there was no ambiguity in the phrase "or any other matter or information" in By-Law 2. The issues that arose for determination *inter alia* were: (i) whether the By-Laws were only applicable to advertisements which were commercial in nature; (ii) whether the exercise of the defendant under the powers of the By-Laws were *ultra vires* of s. 102 of the LGA.

**Held (allowing plaintiff's application with costs):**

**(1)** The purposive approach was not a licence to rewrite the written law by adopting an interpretation that was totally inconsistent with the literal wording of the provision itself. The definition of advertisement in By-Law 2 was expressed in specific and general terms. According to the doctrine of *ejusdem generis,* the general term takes its character or should be construed in a manner consistent with the preceding specific terms. (para 22)

**(2)** The literal interpretation contended for by the defendant could not be countenanced because of the fundamental importance of the concept of purpose in s. 17A of the Interpretation Acts 1948 and 1967 ('Interpretation Acts'). Section 17A clearly provides that an interpretation that would promote the purpose or object underlying the written law shall be preferred to an interpretation that would not promote that purpose or object. The court agreed that the liberal interpretation would produce absurd results. (paras 27 & 28)

**(3)** Applying the purposive approach mandated in s. 17A of the Interpretation Acts in interpreting the provision, it was clear that the By-Law was enacted out of the realistic recognition that there was a need to regulate commercial advertisements which carry an element of trade and commerce to promote business and derive profits. The interpretation was consistent with s. 102 of the LGA that required that By-Laws enacted by local authorities must be for the purpose of promoting good order and government within the jurisdiction of the defendant. The purposive approach therefore required a restricted meaning to be given to the phrase "or any other matter or information" in By-Law 2. This made good practical sense and afforded the public the protection intended and conformed to the general object of the By-Law. (paras 29 & 31)

**Case(s) referred to:**
*Chandris v. Isbrandtsen-Moller Co Inc [1950] 1 All ER 768* ***(refd)***
*Mills v. Meeking [1990] 91 ALR 16* ***(refd)***
*Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC* ***(refd)***
*Yong Seng Yeow v. Indah Water Konsortium Sdn Bhd [2010] 3 CLJ 711 CA* ***(refd)***

**Legislation referred to:**
Federal Capital Act 1960, s. 4(6)
Federal Constitution, art. 10(1)(a)
Interpretation Acts 1948 and 1967, s. 17A
Local Government Act 1976, s. 102
Rules of Court 2012, O. 14A

Interpretation of Legislation Act 1984 [Aust], ss. 15AA, 35(a)

**Other source(s) referred to:**
John Bell & Sir George Engle, *Cross on Statutory Interpretation,* 2nd edn, 1987, p 18
NS Bindra, *Interpretation of Statutes*, 9th edn, pp 683-685
Prof John Burrows, *Interpretation of Legislation: The Changing Approach to the Interpretation of Statutes,* (2002) 33 Victoria U Wellington L Rev 561, pp 564-565

*For the plaintiff - Ranjit Singh (Razlan Hadri Zulkifli & Jamie Wong with him); M/s Ranjit Singh & Yeoh*
*For the defendant - Thangaraj Balasundram (Nalani Murugiah with him); M/s Thangaraj & Assocs*

*Reported by Sandra Gabriel*

## JUDGMENT

**SM Komathy Suppiah JC:**

**[1]** The 9 December 2007 was International Human Rights Day. In conjunction with this day, Malaysian Bar Council, the plaintiff in this action, organised a Festival of Rights at its premises at 13, 15, and 17 Leboh Pasar Besar, Kuala Lumpur and the car park adjacent to it. Banners were put up at both places. Sometime in the afternoon on the same day, several officers of the defendant entered the premises of the plaintiff and pulled down and confiscated these banners.

**[2]** The plaintiff then instituted this action in 2009 alleging that the acts of the defendant's officers were unlawful and unconstitutional and claimed, *inter alia*, general and exemplary damages.

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## Defence

**[3]** In his defence, the Datuk Bandar of Kuala Lumpur, the defendant in this action, denied that the acts of his officers were unlawful. He maintained that his officers had entered the plaintiff's premises only because the latter had failed to obtain a licence to put up the banners as required by the Advertisements (Federal Territory) By-laws 1982 ("hereinafter referred to as "the By-Laws"). The defendant contended that pursuant to the By-laws, his officers were authorised to enter any premises to remove banners of any description that had been put up without obtaining the approval of Dewan Bandaraya Kuala Lumpur ("DBKL").

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## Application Under O. 14A ROC

**[4]** By consent, the plaintiff filed this O. 14A application under the Rules of Court 2012 ("ROC") for the determination of the following six questions of law:

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*Issue (1)*

(i) Whether the By-Laws are only applicable to advertisements which are commercial in nature?;

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*Issue (2)*

(ii) Whether the By-Laws, to the extent it purports to limit the plaintiff's right to freedom of expression guaranteed under art. 10(1)(a) of the Federal Constitution ("FC") in hanging up the plaintiff's banner was unconstitutional and, therefore, void?

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*Issue (3)*

(iii) Whether the purported exercise of the defendant of its purported power under the By-Laws in respect of the defendant's actions was *ultra vires* s. 102 of the Local Government Act 1976 ("LGA")?

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*Issue (4)*

(iv) Whether the defendant, not being the Datuk Bandar Kuala Lumpur as at 5 December 1991 can rely on the gazette as sufficient delegation of his powers under By-Law 14(1) of the By-Laws within the ambit of s. 4(6) of the Federal Capital Act 1960?

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*Issue (5)*

(v) Whether, if any one of the questions 1 to 3 above is answered in the affirmative, or if question 4 above is answered in the negative, the plaintiff is entitled to claim exemplary damages over and above general damages; and

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*Issue (6)*

(vi) Whether the decision of the learned judge on the issue of law as stated above is prospective or retrospective?

**Agreed Facts**

**[5]** The application was premised on the following agreed facts:

(a) The plaintiff is and was at all material times the registered owner of the property known as No. 13, 15 and 17, Leboh Pasar Besar, 50780 Kuala Lumpur, Malaysia ("the premises");

(b) On 9 December 2007, three banners were hung at the premises and the car park adjacent to the premises in the following manner:

(i) At the banister – "Stop the Patronage Stop the Rot" ("banister banner");

(ii) At the entrance to the premise – "As I Believe; Freedom of Expression through Art, Music, Culture and Conscience …" ("entrance banner"); and

(iii) On a tree at the car park – "Rakyat Hakim Negara" ("car park banner").

(c) In or around the afternoon on the same day, several DBKL Officers entered the premises;

(d) The DBKL Officers had ordered the plaintiff to remove the banners;

(e) The DBKL Officers then pulled down the banister banner and the tree banner, took possession of and retained the same;

(f) The DBKL Officers further ordered the plaintiff to pull down the entrance banner and subsequently took possession of and retained the same.

**The Plaintiff's Case**

**[6]** The plaintiff's case, for the purpose of the O. 14A application, is that the defendant's actions, in:

(i) entering the premises without the plaintiff's licence or consent;

(ii) insisting on a licence for the plaintiff's banners;

(iii) insisting that the plaintiff's banners be removed; and

(iv) removing, taking possession and retaining the plaintiff's banners, (collectively referred to as "the defendant's actions")

were unlawful and unconstitutional and, therefore, void.

**[7]** In respect of the above, the plaintiff is seeking, *inter alia*:

(i) a declaration that the By-Laws to the extent that it purports to limit the plaintiff's right to freedom of expression is unconstitutional and, therefore, void;

(ii) a declaration that the purported exercise by the defendant of its purported power under the By-Laws to remove the banners was *ultra vires* s. 102 of the Local Government Act 1976 ("LGA");

(iii) special damages of RM320;

(iv) general, aggravated and exemplary damages.

**The Defendant's Case**

**[8]** The defendant, however, contends that he had not acted in breach of the Federal Constitution or *ultra vires* s. 102 of the LGA on the following two grounds:

(i) that the plaintiff's banners were "advertisement" as defined in the By-Laws and thus, the defendant had the right under By-Law 14(1) to enter and remove them;

(ii) that by reason of the government Gazette No. 11804 dated 5 December 1991 ("gazette") issued by the former Dato Bandar Kuala Lumpur, Tan Sri Dato' Elyas bin Omar, the DBKL officers, through one Corporal Kunasegaran, were delegated to exercise his powers under the By-Laws.

*Issue 1: Whether The By-Laws Are Applicable Only To Advertisements Which Are Commercial In Nature?*

**[9]** The relevant provisions in the By-Laws are reproduced here for easy reference:

By-Law 2 – "advertisement" means any notification, poster, sign board, directive sign, intimation or publication exhibited for the purpose of bringing to the notice of the public any article, product, production, trade, business, profession, firm, corporation, organization, institution, place, premises, event, activity or any other matter or information, on any hoarding, board, roof, wall, paling, fence, tree, frame, plate, cloth, bar, pillar, post, wire, casing, vehicle or any other structure or contrivance, or

any part thereof, on, in or over any building, street, or place of public resort, or on or over any land, includes "sky-sign" as defined in s. 2 of the Act but does not include any election advertisement.

By-Law 5(1) – an advertisement shall be in Bahasa Malaysia whether on its own or together with any other language.

By-Law 8(1) – the commissioner may grant or renew a licence to exhibit advertisement in such form as the Commissioner may determine.

By-Law 8(2) – application for renewal of a licence shall be made before the date of expiry of the licence and shall be accompanied by payment of the licence fee as prescribe in the First Schedule.

By-Law 14(1)– the commissioner may order the summary erasure of any advertisement, including any structure erected specially for the advertisement, exhibited without a licence or in contravention of any of these By-Laws.

By-Law 14(2)– the commissioner or his officers may enter into any premises at all reasonable times and execute the removal of any advertisement if the order of removal has not been complied with.

**[10]** It is common ground that the By-Laws were enacted pursuant to s. 102 of the LGA, which, in so far as material, reads:

> In addition to the powers of making by-laws expressly or impliedly conferred upon it by any provisions of this Act every local authority may from time to time make, amend and revoke by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants or for the good order and government of the local authority area and in particular area and in particular in respect of all or any of the following purposes:
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> (a) …
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> (b)
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> (c) to regulate, license, restrict, prevent or remove the exhibition of advertisements.

**[11]** It is also common ground that in the present context, the By-Law was enacted for the purpose of promoting "good order and government" within the jurisdiction of the defendant.

**[12]** The plaintiff takes the position that only advertisements which are commercial in nature come within the definition of advertisement as provided in By-Law 2. It was argued that if a literal interpretation was given to this definition, it would lead to absurd results as even advertisements which are merely expressing ideas, opinions, principles and values would require a licence. It was pointed out that in India, advertisements are part of the constitutionally protected free speech if they express ideas or propagate human thoughts and only advertisements for purely commercial purposes do not come within the constitution's protection.

**[13]** The plaintiff submitted that a purposive interpretation that would promote the purpose and object underlying the By-Law was to be preferred to a literal interpretation. It was contended that the language used in By-Law 2 demonstrated that the object and purpose of the provision was to regulate commercial advertisements. It was argued that to equate commercial advertisement with non-commercial messages would be contrary to the object of this provision. It would essentially mean that in order to express a view which is to be printed on a banner, a citizen of this country would have to pay a licensing fee to the defendant before such a banner/view could be expressed to the public.

**[14]** In contrast, the defendant contended that a literal interpretation is to be favoured as there is no ambiguity in the words used in By-Law 2. It is said that the display of any information to the public would fall under the definition of advertisement. The only advertisement which does not come within the scope of By-Law 2 is an election advertisement.

**[15]** The defendant further argued that the phrase "or any other matter or information" in By-Law 2 indicated that it included all advertisements regardless of its contents. In support of his submission that the literal interpretation is to be preferred, the defendant relied on the decision of the Court of Appeal in *Yong Seng Yeow v. Indah Water Konsortium Sdn Bhd* [2010] 3 CLJ 711. The following passage (at 720) was cited:

> We fully agree with the learned Judge. The first and foremost elementary rule of construction is that if the words are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense (see *Maxwell on Interpretation of Statues* (11th Ed) at p. 2) A court in construing any written law must strive to give meaning to every word of the provisions. In *Re A Debtor* (No 355 of 1947) [1948] 2 All ER 533, Lord Greene said at p. 536:
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> > ... And if there is one rule of construction for statutes and other documents it is that you must not imply anything in them which is inconsistent with the words expressly used.

**Principle Applicable To Statutory Interpretation**

**[16]** It would be apposite to briefly outline some of the applicable principles of interpretation before interpreting the provisions in the By-Law.

**[17]** Section 17A of the Interpretation Acts 1948 and 1967 ("Interpretation Act") provides:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

**[18]** The underlying rationale of the purposive approach to interpretation is to have the courts construe statutory provisions, as far as it is reasonably possible to do so, in a manner that enables the statutory provision to work effectively having regards to its purpose. This is illustrated by the decision of the Federal Court in *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97. In explaining the purposive approach, Gopal Sri Ram (FCJ) held:

> When construing a taxing or other statute, the sole function of the court is to discover the true intention of Parliament. In that process the court is under a duty to adopt an approach that produces neither injustice nor absurdity, ie, an approach that promotes the purpose or object underlying the particular statute albeit that such purpose or object is not expressly set out therein.

**[19]** In this connection, the comments of Professor John Burrows in *"Interpretation of Legislation: The Changing Approach to the Interpretation of Statutes* (2002) 33 Victoria U Wellington L Rev 561 at 564-565 is useful for our purpose:

> Many cases on interpretation do not just involve deciding what the words of the Act mean; they also involve deciding how they should be applied to the facts of the case in question. A large number of cases on interpretation involve a set of facts that the drafter simply did not anticipate, and the question is whether that set of facts is covered by the statutory provision in question. The strongest contribution of the purposive approach has been to allow words to be given strained or unusual meanings so that they can be held to extend to the facts in question when the purpose of the legislation makes that desirable. Such an approach has enabled courts recently to hold that a container of sweets resembling a baby's bottle was a 'toy'; and that 'logs' (of timber) included cut and partly-processed timber. Proponents of a 'natural meaning' theory of interpretation may find some difficulty with these cases.

A For myself, I do not find a 'natural meaning' rule particularly helpful in cases like this. These cases are not about 'primary' and 'secondary' meaning: they are about the areas of vagueness at the edges of all words. What a purposive approach does is to cope with the difficulty that however careful drafting may be, no drafter can ever foresee and provide exactly for everything that is going to happen in the world of
B fact. Drafters need a little help from the courts in making sure that the Act works effectively.

**[20]** The following passage in John Bell and Sir George Engle, *Cross on Statutory Interpretation* (Butterworths, 2nd edn., 1987) (at 18) is illuminating:
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> The purposive approach allows the judge the latitude to look beyond the four corners of the statute, should he find it necessary to ascribe a wider or narrower interpretation to its words; the judge's role pursuant to this approach is one of 'active co-operation with the policy
D of the statute': see John Bell and Sir George Engle, Cross on Statutory Interpretation.

**[21]** I am conscious that the purposive approach is not a licence to rewrite the written law by adopting an interpretation that is totally inconsonant with the literal wording of the provision itself. This is
E illustrated by the decision of Dawson J in the *Australian case of Mills v. Meeking* [1990] 91 ALR 16. In that case, Dawson J explained the effect of s. 35(a) of the Interpretation of Legislation Act 1984 of Victoria (which is based on s. 15AA of the Australian Act and corresponds to s. 17A of our Interpretation Act) (at 30-31) as follows:

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> The approach required by s. 35 needs no ambiguity or inconsistency; it allows a court to consider the purposes of an Act in determining whether there is more than one possible construction. Reference to the purposes may reveal that the draftsman has inadvertently overlooked something which he would have dealt with had his attention been
G drawn to it and if it is possible as a matter of construction to repair the defect, then this must be done. However, if the literal meaning of a provision is to be modified by reference to the purposes of the Act, the modification must be precisely identifiable as that which is necessary to effectuate those purposes and it must be consistent with the wording otherwise adopted by the draftsman. Section 35 requires
H a court to construe an Act, not to rewrite it, in the light of its purposes. …

**[22]** Another rule of statutory construction to aid in the ascertainment of the true meaning of the statute which is resorted to when the provision to be construed contains specific terms followed by a general
I term. The definition of advertisement in By-Law 2 is expressed in

specific and general terms. According to the doctrine of *ejusdem generis* the general term takes its character or should be construed in a manner consistent with the preceding specific terms.

**[23]** The following passage from *NS Bindra's Interpretation of Statutes*, 9th edn. (at 683 to 684) is useful:

> The rule of *ejusdem generis* is that where particular words are followed in general, the general words should not be construed in their widest sense but should be held as applying to objects, persons or things or the same general nature or class as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. To put it in a slightly different language, where general and special words, which are capable of analogous meaning are associated together, they take colour from each other and the general words are restrained and limited to a sense analogous to the less general.

**[24]** It is trite that for the rule of *ejusdem generis* to apply there must be a sufficient indication in the provision of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore, the genus must be narrower than the general words it is said to regulate. (See *NS Bindra's Interpretation of Statutes*, 9th edn. (at 685)).

**[25]** In *Chandris v. Isbrandtsen-Moller Co Inc* [1950] 1 All ER 768. Devlin J explained the doctrine of *ejusdem generis* in these words:

> The rule is merely, as I think, an aid to ascertaining the intentions of the parties. If there is something to show that the literal meaning of the words is too wide, then they will be given such other meaning as seems best to consort with the intention of the parties. In some cases it may be that they will seem to indicate a genus; in others that they perform the simpler office of expanding the meaning of each enumerated item. If a genus cannot be found, doubtless that is one factor indicating that the parties do not intend to restrict the meaning of the words. But I do not take it to be universally true that whenever a genus cannot be found the words must have been intended to have their literal meaning, whatever other indications there may be to the contrary. I see no reason why, if it accords with the apparent intention of the parties, the words should not be treated, as suggested by Lord MacNaghten in *Thames and Mersey Marine Insurance Co Ltd v. Hamilton Fraser & Co* ((1887) 12 App Cas 484 at 501), as being 'inserted in order to prevent disputes founded on nice distinctions' and 'to cover in terms whatever may be within the spirit of the cases previously enumerated'.

A **Analysis**

**[26]** With the above principles in mind, I will now construe the definition of advertisement in By-Law 2.

**[27]** The literal interpretation contended for by the defendant cannot be
B countenanced because of the fundamental importance of the concept of purpose in s. 17A Interpretation Act. Section 17A clearly provides that an interpretation that would promote the purpose or object underlying the written law shall be preferred to an interpretation that would not promote that purpose or object.

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**[28]** I agree with the plaintiff that a liberal interpretation would produce absurd results as pointed out in their submissions and alluded to in paras. 12 and 13 of this judgment.

**[29]** Applying the purposive approach mandated in s. 17A of the
D Interpretation Act in interpreting the provision, it is clear that the By-Law was enacted out of the realistic recognition that there is a need to regulate commercial advertisements which carry an element of trade and commerce to promote business and derive/earn profits. This purpose is achieved by requiring those who are desirous of displaying commercial
E advertisements to apply for a licence. This interpretation is consistent with s. 102 of the LGA that requires that By-Laws enacted by local authorities must be for the purpose of promoting good order and government within the jurisdiction of the defendant.

**[30]** It would certainly not promote good order and government within
F the jurisdiction of the defendant to stifle the rights of ordinary citizens to put up banners which were not commercial in nature. If the draftsman had intended to include private non-commercial advertisements in the definition, it is reasonable to expect that this would have been easily stated clearly and expressly. On any footing, that has not been
G done.

**[31]** The purposive approach therefore requires a restricted meaning to be given the phrase "or any other matter or information" in By-Law 2. This makes good practical sense and affords the public the protection
H intended and conforms to the general object of the By-Law.

**[32]** Alternatively, I would come to the same conclusion if the general term in By-Law 2 is construed *ejusdem generis*. As noted earlier, the application of this principle presupposes that a genus can be identified for the matters enumerated in the text under scrutiny which precedes
I the general words. The genus in By-Law 2, in my view, relates to trade and commerce.

**[33]** Further, if the intention of the draftsman was to give the general words "or any other matter or information" an unrestricted and unfettered meaning to embrace all advertisements, it would not have been necessary to enumerate the specific words preceding it. It would suffice to use only one compendious expression or to use general words. A

**[34]** Hypothetical examples of the consequences that can result if the wide interpretation sought by the defendant is accepted is useful. An example that readily comes to mind is the gigantic banner that was displayed at the entrance of the Court Complex in Kuala Lumpur in 2009, with the words "BUAT KERJA". This banner was displayed for 12 to 15 months or so. A wide interpretation would mean the court would require a licence to put up a banner to motivate the staff or to state the ethics of the judiciary. Was the banner said to be running foul of the By-Law as it was put up without a licence? I think not. There is no compelling reason to give the phrase a wide meaning as sought by the defendant. B C D

**[35]** I thus agree with the plaintiff's submission that:

(a) If one were to read the literal definition of advertisement under the by-laws, it would be wide enough to encompass virtually any form of communication or expression (including greetings, congratulatory messages etc ie, "Wishing all Malaysians a happy Merdeka Day!" or "Welcome Home, Prime Minister!") which is visible to the public within Kuala Lumpur. E

(b) It would be not acceptable in a right-minded society if one hangs up a banner bearing the words "Happy Birthday Papa" on the wall outside of a private home was subject to a licence fee to be paid, without which the defendant would be entitled to tear it down purportedly pursuant to the by-laws. This would create an absurd result, undesirable whether in the legal or social context of things. F

(c) Of relevance, we note that by-law 3 mandates all advertisements to be in the National Language. They are subject to safeguards in relation to safety requirements etc. It is nonsensical to suggest that private banners for eg. "Wishing All Malaysians Happy Deepavali" must be in the National Language. G

(d) The ambit of the by-laws must have meant to cover advertisements that are commercial in nature. Parliament did not intend it to cover private non-commercial advertisements as they would be subject to other criminal laws such as those which are likely to give rise to breach of peace. H I

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## Conclusion

**[36]** For the reasons given, I answer the question as to whether the By-Laws are applicable only to commercial advertisements, in the affirmative. Having concluded that the By-Laws do not apply to non-commercial advertisements, it is unnecessary to consider the other questions of law framed by the parties. The determination of this issue is sufficient to dispose of this case.

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**[37]** This ruling means that the DBKL officers had entered the plaintiff's premises unlawfully when they went in to remove the banners. On the claim based on trespass, I therefore enter judgment in favour of the plaintiff and award special damages of RM320 and general damages of RM12,000. The plaintiff is also entitled to costs which are to be taxed unless otherwise agreed.

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